

UNITED STATES)
v.)
Noel Hernandez,) Mag. No. 04-000858-003
Defendant.)

)

**DEFENDANT NOEL HERNANDEZ'S MOTION TO VACATE TEMPORARY
DETENTION ORDER**

NOW COMES the defendant, Noel Hernandez, through counsel, and respectfully moves this Honorable Court to vacate its Temporary Order of Detention and release the Defendant from custody pending trial of the instant matter. In support thereof Counsel states the following:

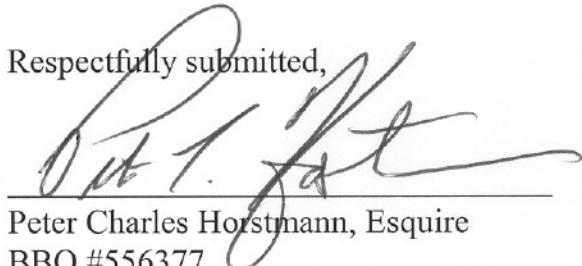
- 1) The Government has moved for detention in this case based upon the risk of flight.
- 2) At previous hearings on the issue of detention this Court indicated that it was concerned about releasing the Defendant to his girlfriend's residence because there was an active criminal complaint pending against the Defendant by the girlfriend in Lynn District Court.
- 3) It is anticipated that this Complaint will be dismissed on September 28, 2004, at the request of the Defendant's girlfriend.
- 4) Alternatively, friends of the Defendant, Sandra and Eduardo Avila, 411 Essex Street, Lynn Massachusetts, have agreed to permit Mr. Hernandez to live at their home

5) Mr. and Mrs. Avila are both citizens of the United States.

6) The undersigned has been advised that Mr. Avila owns and operates a grocery store at which the Defendant may be employed, and Sandra Avila works at Logan Airport.

WHEREFORE, this Honorable Court is respectfully urged to vacate its Order of Temporary Detention and hold a hearing on the instant motion.

Respectfully submitted,

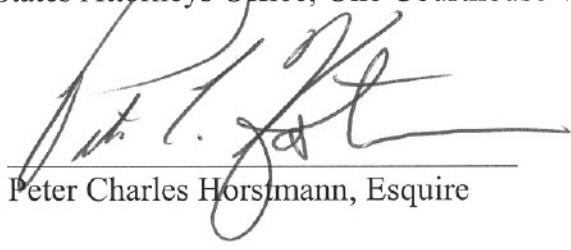

Peter Charles Horstmann, Esquire
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Attorney for Defendant
Noel Hernandez

CERTIFICATE OF SERVICE

I, Peter Charles Horstmann, Esquire, hereby certify that on this 24th day of September, 2004, a copy of the foregoing DEFENDANT'S MOTION TO VACATE TEMPORARY DETENTION ORDER was served, electronically upon Robert Peabody, Assistant United States Attorney, United States Attorneys Office, One Courthouse Way, Boston, MA 02210.


Peter Charles Horstmann, Esquire